

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New)	NOTICE OF PUBLIC HEARING ON
Rule I, the amendment of ARM)	PROPOSED ADOPTION,
42.12.101, 42.12.106, 42.12.111,)	AMENDMENT, AND REPEAL
42.12.118, 42.12.122, 42.12.132,)	
42.12.134, 42.12.135, 42.12.136,)	
42.12.139, 42.12.205, 42.12.208,)	
42.12.209, 42.12.301, 42.12.324,)	
42.13.101, 42.13.106, 42.13.107,)	
42.13.108, 42.13.111, and 42.13.401,)	
and the repeal of ARM 42.12.103 and)	
42.13.105 pertaining to liquor)	
licenses and permits, fees, and the)	
regulation of licensees)	

TO: All Concerned Persons

1. On November 5, 2014, at 1:30 p.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on October 20, 2014. Please contact Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov.

3. The rule as proposed to be adopted provides as follows:

NEW RULE I SEASONAL BUSINESS (1) The department may approve a license for use in a seasonal business to enable closures exceeding 90 consecutive days.

(2) To request approval, the licensee shall submit a written request that includes the:

- (a) type of seasonal business;
- (b) justification for operating seasonally; and
- (c) general dates of operation.

(3) Once approved, a licensee shall notify the department prior to changing the general dates of operation.

AUTH: 16-1-303, MCA

IMP: 16-3-310, MCA

REASONABLE NECESSITY: The department proposes adopting New Rule I to reduce confusion that currently exists within the industry. The provisions being proposed in the new rule are currently located in, and being stricken from, ARM 42.13.108. The department proposes to set this information apart in a new rule because it is currently difficult for the industry to locate.

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

42.12.101 APPLICATION FOR LICENSE (1) All applications for licenses to sell, manufacture, or distribute alcoholic beverages ~~must~~ shall be made to the department upon forms supplied by the department. An abbreviated application may be permissible for license modifications as specified in ARM 42.12.118. In all other cases, the application process specified below shall be followed.

(2) Applications for licenses shall be in the names of all persons ~~with an ownership interest or to~~ who will have an ownership interest in the business to be operated under the license, as required in 16-4-401, MCA. ~~An owner of 10 percent or more, or who will have an ownership interest of 10 percent or more in the license, in the business, or in the entity owning the license, must meet the requirements as described in 16-4-401, MCA. If no single owner's interest is 10 percent or more, then persons whose combined ownership totals, or will total, 51 percent must meet the requirements as described in 16-4-401, MCA. If a corporation is publicly traded, it needs to meet the requirements provided for publicly traded corporations in 16-4-401, MCA. The names of all such persons shall appear on the licenses. The disqualification of any one or more applicants to hold the license disqualifies all.~~

(3) ~~In addition to other information required on the application form, the department may require an applicant to submit all information necessary to determine qualifications, including, but not limited to:~~

~~(a) personal history statements and authorization to access state and federal income tax information for all persons who appear to have an ownership interest or control over the business operated or to be operated under the license; and~~

~~(b) in the case of a license to be operated seasonally, the applicant may be required to submit sufficient information for the department to determine whether the criteria for seasonal operation, as described in 16-3-310, MCA, and ARM 42.13.108, are met.~~

~~(4) Upon receipt of an application for a license to sell, manufacture, or distribute alcoholic beverages, the department shall make a thorough investigation as to the qualifications of the applicant and the suitability of the premises proposed for licensing. If, upon such investigation, it appears that the applicant is qualified under the law, and the premises are suitable for licensing under the laws of the state and the rules of the department, the department shall issue the license if all other requirements of the law and these rules are fulfilled. Temporary authority may be granted to applicants for a retail alcoholic beverages license if the requirements of ARM 42.12.208 are met.~~

~~(5) The licensee remains bound by all requirements in statute and rule that apply at the time an application for license or an application for renewal is approved. A licensee's failure to remain in compliance with a statute or rule shall constitute a violation of that statute or rule and may subject the licensee to administrative action.~~

~~(6) Except as provided in (11), (12), and (13), an ownership interest may not be transferred to a new owner until an application has been submitted to the department and the department approves the transfer.~~

~~(7) To be considered "complete" for processing, applications for licenses to sell alcoholic beverages for on-premises consumption, to manufacture, or distribute alcoholic beverages in Montana must include~~

(3) In addition to the license application, as applicable, the applicant shall submit:

(a) the any processing fee fees required for the applicable license as stated in by ARM 42.12.111 and the license fee required by 16-4-420 or 16-4-501, MCA;

(b) a copy of the proposed agreement to transfer the an ownership interest in the license, if applicable;

(c) proof of that the applicant has possessory interest in the premises by the applicant;

(d) any source of funding documents including, but not limited to, loan documents, gifting statements, and finance institution statements;

(e) the premises floor plan;

(f) taxpayer identification number;

(g) bank account authorization and signature documents;

(h)(g) proof of assumed business name, if applicable;

(i) additional documentation required for entity applicants as stated in ARM 42.12.103;

(j)(h) proof that all filings and payments related to Montana income, corporation, withholding, business, and other taxes, are current for the applicant in all cases, and if the application is for a sale of the license, for the seller (current licensee);

(k)(i) two complete sets of fingerprints, provided on the department's form FD-258 (obtained and certified by a local law enforcement agency, the department, or a private security company which has been approved by the department), for each person required to complete a personal history statement as specified by this rule and a personal history statement for each person identified in 16-4-414, MCA, and ARM 42.12.212; and

(l) for any entity applicant:

(i) proof the business is registered in Montana;

(ii) stock certificates;

(iii) stock ledger or membership units register;

(iv) bylaws; and

(v) organizational meeting minutes.

(l) any other documentation required to determine licensing or premises qualifications.

(4) The department, in its sole discretion, may waive an application requirement set forth in this rule.

(5) The department shall make a thorough investigation as to the

qualifications of the applicant and the suitability of the premises proposed for licensing. The disqualification of any applicant to hold the license disqualifies all.

(6) The department, in its sole discretion, may issue a license. If approved, the licensee remains bound by all requirements in statute and rule that apply at the time an application for license or an application for renewal is approved. A licensee's failure to remain in compliance with a statute or rule shall constitute a violation of that statute or rule and may subject the licensee to administrative action.

~~(8) To be considered "complete" for processing, applications for licenses to sell alcoholic beverages for off-premises consumption only must include:~~

~~(a) the processing fee as required in ARM 42.12.111, and the license fee stated in 16-4-501, MCA;~~

~~(b) proof of possessory interest in the premises by the applicant;~~

~~(c) the premises floor plan;~~

~~(d) taxpayer identification number;~~

~~(e) bank account authorization and signature documents;~~

~~(f) proof of assumed business name, if applicable;~~

~~(g) grocery inventory;~~

~~(h) any other documentation required to determine licensing or premises qualifications;~~

~~(i) proof that all filings and payments related to Montana income, corporation, withholding, business, and other taxes, are current for the applicant in all cases; and~~

~~(j) two complete sets of fingerprints, provided on the department's form FD-258 (obtained and certified by a local law enforcement agency, the department, or a private security company which has been approved by the department), for each person required to complete a personal history statement as specified by this rule.~~

~~(9) In any case of the transfer of an ownership interest to a new owner, the department must determine that the transferred ownership interest will be independently exercised by the new owner and will not remain under the control of the transferor before approving the transfer.~~

~~(10) A certificate, stock, or other evidence of ownership may not be registered in the licensee's records until the department has granted approval of the transfer.~~

~~(11) The provisions of this rule do not apply to:~~

~~(a) the transfer of a security interest in a licensed liquor operation; or~~

~~(b) the death of a licensee. In that case, the procedure described in ARM 42.12.204 applies.~~

~~(12) Transfers of an ownership interest in a licensed operation from foreclosure must follow ARM 42.12.211, except if the foreclosing secured party intends to operate the license. In this case, this rule must be followed.~~

~~(13) For circumstances listed below, an existing licensee may complete a simplified form, provided by the department, along with the required documentation supporting the transactions:~~

~~(a) when an existing owner, member, partner, or shareholder of a licensee entity that was previously qualified is being removed as an owner;~~

~~(b) when an individual or entity is proposed to be added to the license as a less than 10 percent owner;~~

~~(c) when an existing owner, member, partner, or shareholder of a licensee~~

entity that was previously qualified gifts some or all of their ownership interest to another existing owner, member, partner, or shareholder of a licensee entity that was previously qualified; or

~~(d) for a transfer of location of a current licensee. There cannot be other changes to the licensee, such as changes in ownership structure or creditors other than the lessor.~~

~~(14) The department will consider the same matters and conditions on application for renewal of license as for the original application or applications for transfer of ownership.~~

AUTH: 16-1-303, MCA

IMP: 16-3-310, 16-4-105, 16-4-201, 16-4-204, 16-4-207, 16-4-210, 16-4-401, 16-4-402, 16-4-414, 16-4-420, 16-4-501, 16-4-502, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.12.101 to revise the structure of the rule for improved readability, to move content regarding transfers of ownership interest to another rule that addresses that subject matter, and to incorporate information regarding entity applications that had been located in another rule to provide related information together.

The proposed amendment in (1) adds a citation to ARM 42.12.118 to clarify when an abbreviated application may be used. Much of the language in (2) is proposed to be stricken because that content is fully set forth in 16-4-401, MCA, which is referenced in the rule. Proposed newly numbered (3) identifies all information that must be submitted with an application in a single section for ease of reference. Such information was previously found in (3), (7), and (8), as well as ARM 42.12.103, which set forth requirements for entity applicants. Proposed new (4) expresses the department's practice of exercising its discretion to waive an application requirement. Proposed new (5) and (6) constitute a reorganization of content previously found in (4), (5), and (14) of this rule. The information proposed to be stricken from (6), (9), (10), (11), and (12) has been relocated to ARM 42.12.209, which addresses transfers in ownership interests, to provide that information together in a single rule. The language proposed to be stricken in (13) has been moved to ARM 42.12.118, which will address abbreviated applications.

Furthermore, the department reviewed the current authorization and implementing statutes as cited for the rule and proposes striking those that serve no purpose or no longer apply and proposes adding relevant statutory citations to support the rule amendment.

42.12.106 DEFINITIONS The following definitions apply to this chapter:

(1) through (8) remain the same.

(9) "Concession agreements" are agreements between either in which an on-premises consumption beer licensee or all-alcoholic beverages licensee and provides the sale and service of alcoholic beverages for a non-licensed entity operating a business directly related to the liquor operation. ~~Both parties must conduct their respective enterprises within the same building, as set forth in ARM 42.12.133, and the premises must meet suitability requirements as set forth in ARM 42.12.122.~~

(10) remains the same.

~~(11) "Cosmetic change" means, in addition to the examples given in 16-3-311, MCA, the correction of structural defects that do not entail reconfiguration of the premises.~~

(12) through (15) remain the same, but are renumbered (11) through (14).

~~(16)~~(15) "License fee" means a fee paid at the time a new license application is submitted, ~~at the time an existing license transfers ownership, or~~ and upon renewal of an existing license.

(17) through (28) remain the same, but are renumbered (16) through (27).

~~(29)~~(28) "Special event," as it relates to all special permits and catering, means a short, infrequent, out-of-the-ordinary occurrence such as a picnic, fair, festival, reception, seasonal event, or sporting event for which there is an outcome, conclusion, or result. ~~By example, a community winter holiday stroll held on four consecutive weekends, or a community summer gathering held one night a week all summer long that ceases in fall, is a seasonal special event.~~

(30) and (31) remain the same, but are renumbered (29) and (30).

(31) "Temporary operating authority" means the authority granted to an applicant to operate a business pending final approval of the application.

~~(32) "Transfer fee" is the processing fee as specified in ARM 42.12.111.~~

(33) remains the same, but is renumbered (32).

AUTH: 16-1-303, MCA

IMP: ~~16-1-106~~ 16-1-302, ~~16-3-311~~, 16-4-105, 16-4-205, 16-4-207, 16-4-301, 16-4-401, 16-4-402, 16-4-404, 16-4-413, 16-4-420, 16-4-423, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.12.106 to edit and add definitions for terms that are used throughout the subchapter and to remove definitions for terms no longer being used.

The department proposes amending the definition of concession agreement by striking information that is already provided in ARM 42.12.133. The department proposes removing the definition of cosmetic change because that term is defined by 16-3-311, MCA, and used in ARM 42.13.106, rather than chapter 12, which is the chapter to which these definitions apply. The department proposes to remove the definition of transfer fee because that term is not used in chapter 12. The department proposes defining temporary operating authority to enhance the industry's understanding of that term.

Furthermore, the department reviewed the current authorization and implementing statutes as cited for the rule and proposes striking those that serve no purpose or no longer apply and proposes adding relevant statutory citations to support the rule amendment.

42.12.111 PROCESSING FEES (1) ~~The following are the fees to be charged for processing endorsement and license applications are as follows:~~

(a) All-beverages license (including veterans' or fraternal)	\$200 <u>\$400</u>
(b) All-beverages license with catering	
endorsement (when applied for concurrently)	\$200
(c) <u>(b)</u> Beer importer's license	\$100 <u>\$200</u>

(d) (c) Beer wholesaler and table wine distributor license	\$100	\$200
(e) (d) Beer wholesaler beer subwarehouse license		\$100
(f) (e) Beer wholesaler license	\$100	\$200
(g) (f) Brewer's license	\$100	\$200
(h) (g) Brewery storage depot license		\$100
(j) Catering endorsement (all beverages, restaurant beer and wine, and beer)		\$100
(j) (h) Domestic distillery license	\$100	\$200
(i) Domestic distillery storage warehouse license		\$100
(k) (i) Resort all-beverages license	\$200	\$400
(h) (k) Restaurant beer and wine license	\$200	\$400
(m) (l) Retail off-premises beer and table wine license (when applied for concurrently)	\$100	\$200
(n) (m) Retail off-premises beer license	\$100	\$200
(o) (n) Retail off-premises table wine license	\$100	\$200
(p) (o) Retail on-premises beer license and with wine amendment (when applied for concurrently)	\$200	\$400
(q) (p) Retail on-premises beer license (including veterans' or fraternal)	\$200	\$400
(r) (q) Sacramental wine license		\$50
(s) (r) Table wine distributor license	\$100	\$200
(t) (s) Table wine distributor subwarehouse <u>license</u>		\$100
(u) (t) Tour boat endorsement		\$100
(v) Wine amendment (for use with existing on-premises retail beer license)		\$100
(w) (u) Winery license	\$100	\$200
<u>(2) The fees to be charged for processing requests associated with an</u> <u>existing license are as follows:</u>		
<u>(a) Adding a catering endorsement</u>	<u>\$100</u>	
<u>(b) Adding a wine amendment</u>	<u>\$100</u>	
<u>(c) Adding a concession agreement</u>	<u>\$100</u>	
<u>(d) Adding an additional manufacturing location</u>	<u>\$100</u>	
<u>(e) Adding or changing mortgages, secured interests, or liens</u>	<u>\$50</u>	
<u>(f) Transferring ownership as a result of a foreclosure</u>	<u>\$200</u>	
<u>(g) Transferring location</u>	<u>\$200</u>	
<u>(h) Increasing current ownership interest from less than 10 percent to 10</u> <u>percent or more</u>	<u>\$200</u>	
<u>(i) Changing the business entity type</u>	<u>\$200</u>	
<u>(j) Changing the alcohol beverage type</u>	<u>\$200</u>	
(2) remains the same, but is renumbered (3).		
(3) (4) The applicable processing fee must accompany all applications. Processing fees are not refundable.		
(4) Fees for addition or deletion of a mortgage, security interest, or lien are set forth in ARM 42.12.205 and fees for the registration of vendor representatives are set forth in ARM 42.11.214.		
(5) remains the same.		

AUTH: 16-1-303, MCA

IMP: 16-1-302, 16-1-303, 16-4-313, 16-4-414, 16-4-420, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.12.111 to more appropriately reflect the costs to administer the licensing of alcoholic beverages and related modifications. It has been approximately 15 years since the processing fees were last updated.

Several of the costs associated with modifying an existing license include the processing fees that are currently being assessed. The department proposes incorporating these fees into the rule, as new (2), for better transparency.

The department proposes incorporating a processing fee for adding a concession agreement, and adding an additional manufacturing location, in order to offset the cost for processing those requests.

The department further proposes striking (4). The fees charged to vendors are for registering representatives, not for processing the application. The fees for adding and deleting mortgages, security interests, and liens are proposed to be included as part of new (2) to eliminate the need to direct the industry to another rule for this information.

These increased fees require, pursuant to 2-4-302(1)(c), MCA, an estimate of the cumulative amount for all persons of the proposed increase and the number of persons affected. For all licensee types listed in this rule, the estimated number of licenses affected is 4,411, and the increase in total fees for all licensees is estimated to be \$58,600 annually. These estimates were derived from the department's small business impact analysis of the rules contained in this notice. A copy of the full analysis is available upon request from the person in paragraph 6.

42.12.118 ABBREVIATED APPLICATION PROCESS REQUIRED FOR LICENSE MODIFICATION (1) ~~An abbreviated application is required to be filed when a person not previously qualified is proposed to be added to the face of the license as an owner~~ may be used to modify a license as set forth in (2) and (3). The application process in ARM 42.12.101 shall be followed in all other cases.

~~(2) An application is not required to be filed if an existing licensee or member of a licensee entity that was previously qualified is being removed from the face of the license as an owner. In this case, documentation supporting the removal of the person and immediate notification to the department is required~~ Licensees shall submit an abbreviated application within 90 days of:

(a) removing an existing, previously qualified owner, member, partner, or shareholder from the license without the exchange of funds; or

(b) adding an individual or entity as a less than 10 percent owner.

(3) Licensees shall submit an abbreviated application prior to:

(a) changing the ownership interest between two or more qualified owners, members, partners, or shareholders;

(b) transferring the location of the license;

(c) increasing the current ownership interest of any owner, member, partner, or shareholder from less than 10 percent to 10 percent or more;

(d) changing the entity type of the business; or

(e) changing the license type.

(4) A licensee's failure to timely submit an abbreviated application shall constitute a violation and may subject the licensee to administrative action.

AUTH: 16-1-303, MCA

IMP: ~~16-4-405, 16-4-413~~ 16-4-401, 16-4-402, 16-4-414, 16-4-415, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.12.118 to clarify the circumstances that enable the filing of an abbreviated application and to provide licensees with the time frames for these filings. The language proposed to be added was derived in part from language being stricken from ARM 42.12.101, as it is a better fit within this rule. Additional language is proposed to be added to address all instances where an abbreviated application may be used.

The department further proposes revising the rule title to better reflect the content of the rule as amended.

Furthermore, the department reviewed the current authorization and implementing statutes as cited for the rule and proposes striking those that serve no purpose or no longer apply and proposes adding relevant statutory citations to support the rule amendment.

42.12.122 CONDITIONS, QUALIFICATIONS, AND DETERMINATION OF SUITABILITY OF LICENSED PREMISES (1) A party applying ~~for either to obtain a new alcoholic beverages license, the transfer of an ownership interest, of an existing alcoholic beverages license, the transfer of change license location, of an existing alcoholic beverages license, or approval of an alteration to or alter a premises,~~ must shall provide the department with evidence of sufficient to determine the suitability of the premises for the use intended.

(2) The premises may be considered suitable for the retail sale of alcoholic beverages, distribution of alcoholic beverages, or manufacture of alcoholic beverages only if:

(a) it meets the standards of the Department of Public Health and Human Services; the Department of Labor and Industry, Building Codes Bureau; and the Montana Fire Marshal's Office in the Investigations Bureau of the Department of Justice; ~~or their delegated representatives;~~

(b) the investigator can easily determine the type of alcoholic beverages business that is being conducted on the premises due to indoor and outdoor advertising, signage, and/or the general layout and atmosphere of the premises ~~to be licensed;~~

(c) remains the same.

~~(d) the premises are open for business on a regular basis so as not to be considered a license on nonuse status;~~

~~(e)(d) the layout of the premises layout allows for licensee and/or employee only the employee to control over the preparation, sale, service, and/or and~~ distribution of alcoholic beverages;

~~(f)(e) the investigator can verify to the department that the dimensions shown on the floor plan accurately represent the physical layout of the premises;~~

(g) remains the same, but is renumbered (f).

~~(h)~~(g) for a new license, or a transfer of location, the premises are not located where local government zoning restrictions or ordinances prohibit the sale ~~and/or~~ or consumption of alcohol;

~~(i)~~(h) the premises are not located off regular police beats and can be properly policed by local authorities;

~~(j)~~(i) the sale of alcoholic beverages does not occur through the use of a drive-up window; and

~~(k)~~(j) the premises meet the additional rules specific to each license type; ~~and~~

~~(l) the provisions of (3) are met for on-premises licenses.~~

(3) A license issued for on-premises consumption of alcoholic beverages:

(a) must be operated at a premises clearly recognizable as a business established for the on-premises consumption of alcoholic beverages or other business directly related to the on-premises consumption of alcoholic beverages, such as a bowling alley, hotel, gambling casino, or restaurant (not including a coffee or beverage shop, bakery, or kiosk);

(b) and (c) remain the same.

(d) may be used at premises that include a patio/deck, if ~~it has~~ they have the required perimeter barrier and ~~is~~ are in compliance with fire regulations, except that a license used at a golf course does not require a perimeter barrier around a patio/deck because alcohol may be consumed at any place within the boundaries of the golf course;

(e) must be operated at premises where no alcoholic beverages can be provided to the customer from self-service devices, self-service vending machines, self-service reach-in coolers, or self-service open shelving (except for off-premises consumption as provided in (f)), and where the licensee or employees have direct involvement in the service of alcohol for on- or off-premises consumption; and

(f) remains the same.

(4) A shed, warehouse, or other temporary or permanent enclosure used to store alcoholic beverage inventory must be:

(a) connected to the licensed premises;

(b) accessible only from inside the licensed premises; ~~and~~

(c) listed on the floor plan provided to the department ~~and be~~; and

(d) located on property owned or leased by the licensee.

(5) ~~Premises~~ Currently licensed premises that do not meet the suitability standards are required to meet the above standards upon seeking department approval of alterations of the existing licensed premises in accordance with 16-3-311, MCA, or upon a change in ownership of the license, excluding ownership changes among existing owners of an entity licensee such as death of a co-owner, or divorce among co-owners, ~~or other changes among existing owners of the licensee entity.~~

(6) The licensee must have possessory interest in the entire premises.

(7) The privileges granted under a license extend only to the premises depicted in the approved floor plan. The licensee shall follow the process in ARM 42.13.106 to change the floor plan.

(8) Only one license can operate on the premises depicted in the approved floor plan.

(9) A licensee may operate two or more service areas located on the same

premises only if there is access allowing patrons to move freely from one service area to another without leaving the premises.

AUTH: 16-1-303, MCA

IMP: 16-3-311, 16-4-402, ~~16-4-404~~, 16-4-405, ~~16-4-420~~, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.12.122 to improve the readability of the rule and to provide more comprehensive information to the industry regarding premises suitability requirements.

The proposed additional language in new (6) through (9) is currently found in ARM 42.13.105, which the department is proposing to repeal in this same notice. The department proposes repealing that rule and locating the relevant information within this rule as a better fit.

The department further proposes revising the rule title to better reflect the content of the rule as amended. Furthermore, the department reviewed the current authorization and implementing statutes as cited for the rule and proposes striking those that serve no purpose or no longer apply and proposes adding relevant statutory citations to support the rule amendment.

42.12.132 MANAGEMENT AGREEMENTS (1) through (3)(b)(ii) remain the same.

(iii) authority to remodel or otherwise make changes in the business operation requiring ~~nonroutine~~ non-routine actions;

(iv) through (3)(i) remain the same.

(4) Management agreements failing to meet any of the standards set forth in (1), (2), and (3) will be marked as rejected and returned to the licensee, together with a written explanation of the reasons for the rejection. If the deficiencies are not corrected within 30 days of the time set by the department, the tendered management agreement will be deemed to be void. ~~Failure of the licensee to terminate operations under a void management agreement constitutes a violation of Montana law and departmental rules.~~

(5) A licensee's failure to remain in compliance with the terms of the approved management agreement or failure to terminate operations under a void management agreement shall constitute a violation of this rule and may subject the licensee to administrative action.

AUTH: 16-1-303, MCA

IMP: 16-1-302 ~~16-3-101~~, ~~16-4-404~~ 16-4-414, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.12.132 to make a grammatical correction in (3) and adding a new (5) to make it clear that failure to comply with the management agreement conditions may result in administrative actions against the licensee. The language proposed to be stricken from (4) is relocated within (5).

Furthermore, the department reviewed the current authorization and implementing statutes as cited for the rule and proposes striking those that serve no purpose or no longer apply and proposes adding relevant statutory citations to

support the rule amendment.

42.12.134 CONDITIONS AND QUALIFICATIONS SPECIFIC FOR AN ALL-BEVERAGES LICENSE (1) In addition to the ~~provisions stated~~ requirements in ARM 42.12.122, ~~which pertain to every type of alcoholic beverage license, with regard to an all-beverages license, a party applying for either a new license, transfer of ownership of an existing license, transfer of location of an existing license, or approval of an alteration to the premises~~ an all-beverages licensee:

- (a) ~~must~~ shall offer beer, wine, and distilled spirits by the drink; and
- (b) may sell alcoholic beverages for off-premises consumption only in ~~their original packages, an~~ original packaging, individual ~~serving~~ servings, or beer in refillable ~~beer~~ growlers; and
- (c) shall prohibit on-premises consumption or possession of alcoholic beverages between the hours of 2 a.m. and 8 a.m., by removing all alcoholic beverages from individuals' possession by 2 a.m.

AUTH: 16-1-303, MCA

IMP: 16-3-303, ~~16-3-310~~, 16-3-311, ~~16-4-201~~, ~~16-4-203~~, ~~16-4-402~~, ~~16-4-404~~, 16-4-405, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.12.134 to improve the information provided in the rule for enhanced industry understanding regarding the time alcoholic beverages may be consumed or possessed while on the licensed premises.

Furthermore, the department reviewed the current authorization and implementing statutes as cited for the rule and proposes striking those that serve no purpose or no longer apply and proposes adding relevant statutory citations to support the rule amendment.

42.12.135 CONDITIONS AND QUALIFICATIONS SPECIFIC FOR A RESTAURANT BEER AND WINE LICENSE (1) In addition to the ~~provisions stated~~ requirements in ARM 42.12.122, ~~which pertain to every type of alcoholic beverage license, with regard to a restaurant beer and wine license, a party applying for either a new license, transfer of ownership of an existing license, transfer of location of an existing license, or approval of an alteration to a premises~~ a restaurant beer and wine licensee:

- (a) ~~must~~ shall operate at a premises clearly recognizable as a restaurant, as defined in ARM 42.12.401; and
 - (b) must not provide alcoholic beverages to any person for off-premises consumption; and
 - (c) shall prohibit on-premises consumption or possession of alcoholic beverages between the hours of 11 p.m. and 11 a.m., by removing all alcoholic beverages from individuals' possession by 11 p.m.
- (2) remains the same.

AUTH: 16-1-303, MCA

IMP: 16-3-311, ~~16-4-402~~, ~~16-4-404~~, 16-4-405, 16-4-420, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.12.135 to improve the information provided in the rule for enhanced industry understanding regarding the time alcoholic beverages may be consumed or possessed while on the licensed premises. Furthermore, the department reviewed the current authorization and implementing statutes as cited for the rule and proposes striking those that serve no purpose or no longer apply.

42.12.136 CONDITIONS AND QUALIFICATIONS SPECIFIC FOR A BEER LICENSE AND A BEER LICENSE WITH WINE AMENDMENT FOR ON-PREMISES CONSUMPTION (1) In addition to the ~~provisions stated~~ requirements in ARM 42.12.122, ~~which pertain to every type of alcoholic beverage license, with regard to beer licenses for on-premises consumption, a party applying for either a new license, transfer of ownership of an existing license, transfer of location of an existing license, or approval of an alteration to the premises~~ an on-premises consumption beer licensee:

(a) ~~for a beer license with a wine amendment,~~ must meet the standards for premises operated as either a restaurant or a prepared food business when operated in conjunction with a wine amendment;

(b) ~~must~~ shall offer beer and/or wine by the drink; and

(c) may sell alcoholic beverages for off-premises consumption only in their original packages, an packaging, individual ~~serving~~ servings, or ~~beer in~~ refillable beer growlers; and

(d) shall prohibit on-premises consumption or possession of alcoholic beverages between the hours of 2 a.m. and 8 a.m., by removing all alcoholic beverages from individuals' possession by 2 a.m.

AUTH: 16-1-303, MCA

IMP: 16-3-303, ~~16-3-310,~~ 16-3-311, ~~16-4-105,~~ 16-4-203, ~~16-4-402,~~ 16-4-404, 16-4-405, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.12.136 to improve the information provided in the rule for enhanced industry understanding regarding the time alcoholic beverages may be consumed or possessed while on the licensed premises.

The department reviewed the current authorization and implementing statutes as cited for the rule and proposes striking those that serve no purpose or no longer apply.

42.12.139 CONDITIONS AND QUALIFICATIONS SPECIFIC FOR A MANUFACTURER OF BEER, WINE, OR DISTILLED SPIRITS LICENSE

(1) remains the same.

(2) A manufacturer's premises may include more than one building for manufacturing purposes. To seek approval, the licensee shall submit a form provided by the department and include verification that the Alcohol and Tobacco Tax and Trade Bureau approved the licensee's registration to operate the building under the manufacturer's existing federal permit or notice.

(3) A manufacturer is only permitted to have one sample room per license. Adding another building for manufacturing purposes under the same license does not permit an additional sample room.

AUTH: 16-1-303, MCA

IMP: 16-3-213, 16-3-214, 16-3-411, 16-4-102, ~~16-4-107~~, 16-4-311, 16-4-312, 16-4-402, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.12.139 to allow for the manufacturing premises to include more than one building provided that it meets certain requirements. Allowing for additional buildings to be included within the premises will more closely mirror federal laws for manufacturers. Furthermore, the department reviewed the current authorization and implementing statutes as cited for the rule and proposes striking those that serve no purpose or no longer apply.

42.12.205 REQUIREMENTS WHEN LICENSE SUBJECT TO LIEN (1) All-beverages and on-premises beer licenses may be subject to a mortgage, security interest, and other valid lien. Upon written request to the department, accompanied by a copy of the note or mortgage, security agreement, or other loan document (in which the license or licenses to be affected are described with common certainty such as inclusion of license number), together with a fee of ~~\$10 as required in ARM 42.12.111~~, the department will add the name of the mortgagee, secured party, or other lien holder, which must be endorsed upon the license. All such requests shall be upon forms prescribed by the department and signed in each case by the licensee and the mortgagee, secured party, or other lien holder.

(2) remains the same.

(3) At such time as any mortgage, security interest, or lien affecting any license has been satisfied and fulfilled, the name of the mortgagee, secured party, or lien holder shall be removed upon written request of all parties in interest ~~and upon the payment of a fee of \$10, provided, however, that in the case of foreclosure and the transfer of license to the mortgagee, secured party, or lien holder, no such fee is required.~~ If the mortgagee, secured party, or lien holder is deceased, or otherwise unavailable, the written request may be made by the personal representative, heir, devisee, or other person upon providing sufficient proof that the person has authority to act on behalf of the estate or has otherwise received the right to the security interest or lien. Any name of a mortgagee, secured party, or lien holder may also be removed upon the written request of the licensee or applicant for the license if accompanied by a court order releasing the security interest or lien, or other sufficient proof showing that the security interest or lien has expired, been discharged, or otherwise extinguished.

(4) and (5) remain the same.

(6) Upon written request to the department, together with a fee of ~~\$20 as required in ARM 42.12.111~~, the name of a person claiming a security interest shall be endorsed upon the license and shall be kept on file with the department. All such requests shall be upon forms prescribed by the department and signed in each case by the licensee and the person claiming the security interest.

(7) through (10) remain the same.

AUTH: 16-1-303, MCA

IMP: 16-4-204, 16-4-404, 16-4-801, ~~30-1-201, 30-9A-102~~, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.12.205 by striking the fee associated with mortgage, security interest, and lien changes and instead referencing the specific rule that addresses processing fees associated with alcoholic beverage licenses. This will allow all processing fees to be located in one rule. Furthermore, the department reviewed the current authorization and implementing statutes as cited for the rule and proposes striking those that serve no purpose or no longer apply.

42.12.208 TEMPORARY OPERATING AUTHORITY (1) Temporary An
applicant may be granted temporary operating authority as provided by 16-4-404,
MCA, may be issued only to an applicant who requests a transfer of ownership.
Temporary operating authority must not be granted on an application for an original
license, or when there is a proposed change of location for the existing licensed
premises if the premises were licensed within the last 12 months, the premises were
not altered from the last floor plan, and the applicant has submitted an application
meeting the requirements of ARM 42.12.101.

(2) The granting of temporary operating authority is neither a temporary license nor a permit. It does not constitute a transfer of ownership, nor does it guarantee that the department will grant the application if it finds, subsequent to receipt of a complete investigation report, that the applicant is not qualified to hold a license, or the premises is are not suitable for the operation of the business.

(3) Temporary operating authority will be issued for a 45-day period ~~and extended for an additional 45-day period if the application has not been processed within that time.~~ If the application is not approved within this 45-day period:

(a) temporary operating authority will continue if the department caused the delay (the department will notify the applicant if this occurs); and

(b) temporary operating authority will cease if the department did not cause the delay, unless the applicant demonstrates to the department's satisfaction that the cause of the delay was beyond the applicant's control. The applicant must submit written documentation to the department seven days prior to the expiration of the temporary operating authority. The department will notify the applicant whether or not an additional 45-day period is granted.

(4) through (6) remain the same.

AUTH: 16-1-303, MCA

IMP: 16-4-404, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.12.208 to enhance the industry's understanding of temporary operating authority.

The department proposes amending (1) for improved clarity regarding when a licensee may be issued temporary operating authority. The department further proposes amending (3) to include information about when temporary operating authority may continue if the license is not issued within the 45-day time period.

42.12.209 TRANSFER OF A LICENSE TO ANOTHER PERSON (1) A ~~license~~ An ownership interest may be transferred to another qualified person only pursuant to means legally authorized for the transfer of personal property in Montana, such as when the person:

(a) ~~the person~~ is a purchaser upon a bona fide sale;
(b) ~~the person~~ is the personal representative of the estate of a deceased licensee;
(c) ~~the person~~ has a security interest in a license being foreclosed pursuant to ARM 42.12.205;

(d) ~~the person~~ is gifted the license and the donor completely transfers ownership interest, as provided in Title 70, chapter 3, part 1, MCA; or

(e) ~~the person~~ is appointed receiver under the license receivership.

(2) ~~A potential buyer of an ownership interest of 10 percent or more in a liquor license is required to submit an application for transfer of a liquor license pursuant to ARM 42.12.101. The applicant for ownership of the license must be notified in writing by the department that either temporary operating authority or conditional approval has been granted or such a transfer of the license is approved by the department before the buyer may pay to or in any way transfer any money or other valuable consideration to the seller in payment for the business operated under the license. If money is paid to the seller on the granting of temporary operating authority or conditional approval and the application is later not approved, the money, with the exception of a reasonable amount considered earnest money, must be returned~~ An ownership interest may not be transferred to a new owner until an application reflecting the proposed transfer is submitted to the department and the department approves the application.

(3) ~~The seller and the buyer may exchange any portion of the purchase price so long as the amount is placed in escrow if temporary authority or conditional approval has not been issued~~ A current ownership interest of less than 10 percent may not be increased to 10 percent or more until an application reflecting the proposed increase is submitted to the department and the department approves the application.

(4) ~~A transfer of ownership interest or money changing hands between currently qualified and disclosed owners is not prohibited prior to notification to and approval by the department~~ The application process in ARM 42.12.101 shall be followed unless an abbreviated application is authorized by ARM 42.12.118.

(5) ~~The department may revoke a license for a violation of the requirements in (2)~~ shall make a thorough investigation as to the qualifications of the applicant and the suitability of the premises proposed for licensing. The department must determine that the transferred ownership interest will be independently exercised by the new owner and will not remain under the control of the transferor before approving the transfer.

(6) ~~The buyer of the license can acquire the seller's alcoholic beverage inventory~~ department shall not approve an application for a transfer of ownership interest where the current owner is not current on the filing or payment of Montana state taxes or liquor fees, fines, or penalties.

(7) Prior to the department granting written approval:

(a) a certificate, stock, or other evidence of the proposed ownership interest may not be registered in the licensee's records; and

(b) any funds or other consideration for the liquor license may not be exchanged unless:

(i) temporary operating authority or conditional approval is granted, but any consideration other than earnest money must be returned to the buyer in the event the application is not approved; or

(ii) the consideration is held in escrow.

(8) The provisions of this rule do not apply to the:

(a) transfer of a security interest in a licensed liquor operation;

(b) addition of an individual or entity as a less than 10 percent owner;

(c) death of a licensee (ARM 42.12.204 applies); or

(d) foreclosure of an ownership interest (ARM 42.12.211 applies).

(9) Any party that is not a licensee is prohibited from controlling or participating in the licensed operation in any capacity reflecting an ownership interest. A licensee's allowance of an undisclosed ownership interest shall constitute a violation and may subject the licensee to administrative action, including revocation of the license.

(10) The department, in its sole discretion, may waive an application requirement set forth in this rule.

AUTH: 16-1-303, MCA

IMP: 16-4-401, 16-4-402, ~~16-4-404~~, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.12.209 to improve the readability of the rule and to provide more comprehensive information to the industry regarding the requirements to transfer a license within a single rule.

The department proposes amending (2) and (3) to help parties identify when an application must be submitted to transfer an ownership interest. The proposed new language specifies that a transfer cannot occur until the department approves the application.

The amendment and addition of the new language in (4) will guide parties to the process for the regular application and abbreviated application. The department also proposes amending (5) to remind both entities involved that any unpaid fees and penalties against the current owner must be paid before the department will approve the transfer. This process represents current practice and the department proposes including the language within the rule to better inform the industry regarding the requirement.

The proposed new language regarding state taxes is based on that currently found in ARM 42.12.101. The department is proposing to strike the language from that rule and relocate it within new (6) of this rule as a better fit. Proposed new (7) is based on language being stricken from ARM 42.12.101, and contains the requirements involving certificates and stocks.

Proposed new (8) is also based on language being stricken from ARM 42.12.101, and notifies licensees that allowing an undisclosed ownership interest constitutes a violation that may subject the licensee to administrative action. This is

not a change in department practice; it merely constitutes the recitation of all relevant information regarding undisclosed ownership interests within one rule. Proposed new (9) expresses the department's practice of exercising its discretion to waive an application requirement.

Furthermore, the department reviewed the current authorization and implementing statutes as cited for the rule and proposes striking those that serve no purpose or no longer apply.

42.12.301 RESORT LICENSES (1) and (2) remain the same.

(3) County all-beverages or county beer licenses are allowed within a defined resort area and such licenses are not considered for purposes of determining the number of allowable resort all-beverages licenses.

(4) For the purposes of 16-4-202, MCA, accommodation units are a type of lodging in which the unit can be separately locked by the occupant and contains sleeping, bathing, and toilet facilities. The primary purpose of such units must be to accommodate visitors.

AUTH: 16-1-303, MCA

IMP: 16-4-201, 16-4-202, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.12.301 to add better clarity regarding the issuance of resort licenses, in an effort to reduce confusion that currently exists within the industry. Proposed new (3) specifies that county licenses may be located in areas that have been approved for resort determination. Proposed new (4) provides the industry with guidance regarding what qualifies as an accommodation unit.

42.12.324 SPECIAL PERMITS (1) through (7) remain the same.

(8) A special permit is subject to the provisions of 16-3-306, MCA, unless the entities in 16-3-306, MCA, provide the department with advanced written approval.

AUTH: 16-1-303, MCA

IMP: 16-3-306, 16-4-301, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.12.324 to allow for an exception for a permitted special event to occur in an area that would otherwise be disallowed due to the nearby location of an entity named in 16-3-306, MCA, if the department receives prior written approval from those entities.

The proposed language in new (8) will allow the special permit holder to conduct an event without having to find an alternative location, provided the neighboring entities approve. Furthermore, the department reviewed the current authorization and implementing statutes as cited for the rule and proposes adding the relevant statutory citation to support the rule amendment.

42.13.101 COMPLIANCE WITH LAWS AND RULES (1) and (2) remain the same.

(3) The department will impose progressive penalties for multiple violations of

any laws, ordinances, and rules within any three-year period unless mitigating circumstances indicate the penalty should be reduced, or aggravating circumstances indicate the penalty should be increased. Violations and progressive penalties include, but are not limited to, those listed on the following chart. Any combination of four of the violations listed below occurring within a three-year period could result in a license revocation action.

<u>Violation</u>	<u>1st Offense</u>	<u>2nd Offense</u>	<u>3rd Offense</u>	<u>4th Offense</u>
Sale to an Underage Person	\$250	\$1000	\$1500/20-day Suspension	Revocation
Sale to an Intoxicated Person	\$250	\$1000	\$1500/20-day Suspension	Revocation
Open after Hours	\$150	\$600	\$1000/12-day Suspension	Revocation
Sale after Hours	\$150	\$600	\$1000/12-day Suspension	Revocation
Re-pouring	\$250	\$1000	\$1500/20-day Suspension	Revocation
Denial of Right to Inspect	\$150	\$600	\$1000/12-day Suspension	Revocation
No Approval to Alter	\$300	\$600	\$1000/12-day Suspension	Revocation
No Management Agreement	\$150	\$600	\$1000/12-day Suspension	Revocation
Improper use of Catering Endorsement	\$150	\$600	\$1000/12-day Suspension	Revocation
Accept more than 7 Days credit	\$250	\$1000	\$1500/20-day Suspension	Revocation
Extend more than 7 Days Credit	\$250	\$1000	\$1500/20-day Suspension	Revocation
Licensee or employee without valid alcohol sales				

and service training
certificate

Violation of
Responsible Alcohol
Sales and Service
Act

~~Penalty for violations of this type as specified by (7)~~
~~and by statute Monetary penalties for these~~
~~violations are stated in (7).~~ Revocation for fourth
violation.

Undisclosed
Ownership Interest

~~Fine~~ Monetary Penalty, Suspension, or Revocation

Denial of Right to
Inspect

Monetary Penalty, Suspension, or Revocation

90-Day Unapproved
Nonuse Without
Approval

Lapse

(4) ~~The~~ When a license has been revoked, the department will not consider
~~reinstatement of a revoked license accept an application from any of the previous~~
~~licensees for one year from the date of revocation. In every case, reinstatement~~
After the one-year moratorium, an application will only be allowed if: accepted if

(a) ~~the licensee applicant demonstrates to the department that the licensee~~
~~has taken department's satisfaction that sufficient steps were taken to insure the~~
~~causes of the license revocation will be prevented from occurring in the future; and~~

(b) ~~a license is available under the quota~~ prevent future violations.

(5) and (5)(a) remain the same.

(b) if the area is over quota, the revoked license will cease to be available for
issuance.

(6) A revoked beer or beer and wine license issued within a city quota area
before October 1997, if reinstated, will not allow any gaming or gambling activity on
the licensed premises.

(7) ~~A penalty for a licensee or licensee's employee not having a valid alcohol
server training certificate shall be assessed against the licensee for whom the
employee works at the time of the violation. The penalty for this violation is imposed
against the licensee, and the licensee having multiple untrained employees on a
particular date shall not be considered multiple violations; however, continued
noncompliance on a future date may be considered as an additional violation of the
server training requirement. The penalty shall be assessed in addition to any
penalty for other Montana alcoholic beverage code violations such as sales to
underage persons and/or sales to intoxicated persons, and the violation will be
considered a separate violation by the department. Penalties for not having valid
alcohol server training certificates may be taken into account based on the mitigating
factors described in (8) when determining a licensee's total number of violations in a
three-year period for purposes of the progressive penalty schedule in (3). However,
the monetary penalty for each server training certificate violation shall be \$50 for a
first offense, \$200 for a second offense, and \$350 for a third offense in a three-year
period. An employee's failure to possess a valid alcohol server training certificate~~

constitutes a violation, the penalty for which is assessed against the licensee. Multiple untrained employees on a particular date may constitute a single violation; continued noncompliance may constitute an additional violation. Regardless of other violations within the three-year period, the civil penalties assessed for a violation of the Responsible Alcohol Sales and Service Act shall be \$50 for the first offense, \$200 for the second offense, and \$350 for the third offense. A licensee shall receive a reprimand for the licensee's violation of the Responsible Alcohol Sales and Service Act only upon demonstration that:

~~(a) Example: If a licensee has one previous violation for sale after hours, and later violates the training certificate provision, the licensee will be penalized \$50 for the training certificate violation, although the violation will be considered a second violation on the licensee's record. Then, if the licensee commits another violation within the same three-year period (for instance, a sale to an underage person), the penalty for that violation will be a third-violation penalty it is the licensee's first offense of the Responsible Alcohol Sales and Service Act under that license;~~

~~(b) all immediate supervisors of employees who sell or serve alcoholic beverages are trained; and~~

~~(c) the licensee's business practices substantially comply with the server training requirements such that the violation resulted from an oversight or mistake.~~

~~(8) Mitigating circumstances with regard to Title 16, ch. 4, part 10, MCA, are considered as follows A licensee shall receive a reprimand for the violation of selling to an underage person only if:~~

~~(a) The mitigating circumstances provisions of 16-4-1008, MCA, apply only to violations of Title 16, ch. 4, part 10, MCA, and not to other violations. it is the licensee's first offense of any kind under that license in the past three years;~~

~~(b) Neither cost nor convenience of training shall be considered by the department to excuse any licensee from compliance with the requirements of Title 16, ch. 4, part 10, MCA, and these rules. the person who made the sale possesses a valid alcohol server training certificate; and~~

~~(c) Any violation of 16-4-1005, MCA, occurring prior to April 1, 2012, will not be taken into account in determining the licensee's number of violations in a three-year period.~~

~~(d) In the department's discretion, a violation of 16-4-1005, MCA, occurring on or after April 1, 2012, may not be taken into account in determining the licensee's number of violations in a three-year period if:~~

~~(i) all managers and supervisors of persons who serve or sell alcoholic beverages meet the training requirements;~~

~~(ii) the licensee demonstrates to the department's satisfaction that its business policies and practices reflect substantial compliance with the server training requirements such that it is apparent the violation was the result of an oversight or mistake; and~~

~~(iii) the licensee has committed no previous violations of 16-4-1005, MCA the licensee has not previously received a reprimand for sale to an underage person under that license.~~

~~(9) Mitigating circumstances in the case of sale to an underage person could result in a reprimand for the first offense under Title 16, MCA, within the most current three-year period if the licensee has provided alcoholic beverage service training~~

~~acceptable to the department to all of its employees and reinforces that training with each employee at least every two years. The licensee must demonstrate that the person who made the sale to an underage person has completed alcoholic beverage service training prior to the department considering issuance of a reprimand. A written reprimand will be considered a first offense for the application of the progressive penalty schedule only if the licensee commits the same offense again within one year. The written reprimand in lieu of a violation shall be available only one time per licensee~~ In the event a reprimand is issued:

(a) the incident shall not be considered to be a first offense for purposes of the progressive penalty schedule in (3) unless the licensee commits the same offense within one year; and

(b) the department may still assess the monetary penalty associated with the offense.

(10) through (11)(c) remain the same.

(d) recurring sales to underage persons or sales to or intoxicated persons;

(e) and (f) remain the same.

~~(12) If the violation discovered is an undisclosed ownership interest, the department will consider aggravating circumstances described in (11) and mitigating circumstances such as voluntary disclosure of relevant facts in determining the appropriate penalty.~~

~~(13) Nothing in this rule prevents the department from revoking, suspending, or refusing the renewal of a license if revocation, suspension, or refusing renewal are~~ is expressly allowed in law or rule with reference to a prohibited act.

AUTH: 16-1-303, 16-4-1009, MCA

IMP: ~~16-1-302, 16-3-301, 16-4-406, 16-4-1001, 16-4-1002, 16-4-1003, 16-4-1004, 16-4-1005, 16-4-1006, 16-4-1007, 16-4-1008, 16-6-305, 16-6-314, MCA~~

REASONABLE NECESSITY: The department proposes amending ARM 42.13.101 to restructure and revise the rule for better clarity.

The violation for denying a premises inspection, in (3), is proposed to be amended to make the progressive penalty broader to allow each situation to be handled on a case-by-case basis. The department further proposes to amend this section, along with the progressive penalty for undisclosed ownership interest, by using the term monetary penalty rather than fine to increase the industry's understanding. Section (4) is proposed to be amended to improve readability, and (5) and (6) to correct punctuation.

The department proposes amending (7), (8), and (9) to reduce existing confusion and provide better guidance to the industry about when the department may grant a reprimand in lieu of a violation for violations of the Responsible Alcohol Sales and Service Act and sales to underage persons. As amended, the rule will be more transparent.

The date references in (8) are also proposed to be stricken as they no longer need to be referenced within the rule. The amendments to (11) are proposed to improve readability, and the proposed amendments to (12) strike language that is unnecessary because the department is statutorily mandated to consider aggravating and mitigating circumstances for all violations. The department further

proposes to make grammatical and punctuation corrections in (13).

Furthermore, the department reviewed the current authorization and implementing statutes as cited for the rule and proposes striking those that serve no purpose or no longer apply and proposes adding relevant statutory citations to support the rule amendment.

42.13.106 CHANGE OR ALTERATION IN OF PREMISES (1) Any alteration or change to a licensed premises, ~~or any significant change to the manner of operation other than a cosmetic change, as defined in 16-3-311, MCA,~~ must be preapproved by the department.

(2) A Prior to making alterations, a licensee must submit a request to alter the premises and copies of the current and proposed floor plan to the department prior to making alterations, and complete an alteration questionnaire provided by the department plans.

(3) Upon receipt of the alteration questionnaire and all supporting documentation items in (2), the department will advise the licensee within seven working days of approval or denial to proceed with of the alteration request.

(4) The department's approval of an alteration shall be valid for one year. Any alterations that are not completed within one year must be resubmitted to the department for approval.

~~(4)(5)~~ Upon approval by the department, the licensee may start alterations. In the event the alteration prevents the licensee from continuing operations premises becomes inoperable, the licensee must shall request nonuse status pursuant to ARM 42.13.107.

~~(5)(6)~~ Upon completion of the alterations, the licensee must notify the department and provide respective is responsible for ensuring the department receives notification of building, health, and fire code approval for the premises. A premises inspection will be arranged by the department. In the case of an addition of an area not already licensed, the licensee must first have a premises inspected

(7) Upon receipt of the building, health, and fire code approvals, the department will arrange for an inspection of the premises by the Department of Justice.

~~(6)(8)~~ Upon written approval by Once the Department of Justice has approved the premises, the department, shall notify the licensee that the alteration is considered complete approved and any new addition will be considered is now part of the floor plan licensed premises. Prior to receiving this written approval, a licensee shall not operate in any area that has not been previously approved.

~~(7)(9)~~ Any alteration or change to a licensed premises, other than a cosmetic change, without prior approval as set forth in (1) will be considered shall constitute a violation and may subject the licensee to penalty administrative action.

AUTH: 16-1-303, MCA

IMP: ~~46-1-303~~ 16-3-302, 16-3-311, 16-4-402, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.13.106 to better outline the premises alteration process for the industry. The proposed amendments are intended to improve readability and to include a provision

regarding the length of time an alteration approval remains valid in order to ensure that agreed upon alterations are timely completed. The department further proposes simplifying the rule title.

Furthermore, the department reviewed the current authorization and implementing statutes as cited for the rule and proposes striking those that serve no purpose or no longer apply and proposes adding relevant statutory citations to support the rule amendment.

~~42.13.107 EXTENSION OF TIME FOR NONUSE STATUS~~ (1) ~~Any licensee or applicant requesting an extension of time for nonuse of a license in accordance with 16-3-310, MCA, must furnish written evidence of the reasons for failure to place the license in operation within the time prescribed. The department shall grant nonuse status to a licensee that is not operating a going establishment if:~~

~~(a) the licensee submits a written request verifying the nonuse is beyond the licensee's control; and~~

~~(b) the request is received prior to exceeding 90 days of not operating a going establishment.~~

~~(2) The department may grant up to three extensions of nonuse status in increments not exceeding 90 days. If the license is not put into use within one year, the department will consider whether extenuating circumstances exist when determining whether further extensions of nonuse status may be granted. If the quota area is full, extreme and unforeseen hardship must be justified. The approved nonuse period shall not exceed one year.~~

~~(3) The licensee shall be required to attend an informal conference conducted by the department in Helena to afford the licensee or person(s) holding a security interest in the license the opportunity to present evidence establishing justification for any further extension of nonuse status. If the department determines additional nonuse time is justified, a letter granting nonuse status will be issued. If the department determines continued nonuse status is not justified, the department will issue a notice to lapse the license. Prior to expiration of the approved nonuse period, the licensee shall resume operations and notify the department that operations have resumed.~~

~~(4) The department may deny requests for extensions of nonuse status if the licensee or those person(s) having a security interest in the license fail to establish any progress towards putting the license into use. If a licensee fails to timely resume operations or provide the required notification, the department shall lapse the license pursuant to 16-3-310, MCA, and ARM 42.13.108.~~

~~(5) Requests for extension of nonuse status based on voluntary closure due to adverse economic conditions or repeated requests based on a proposed sale of a license will not constitute sufficient grounds for extending nonuse status. An earnest money receipt signed by the proposed purchaser is needed for proof of a pending sale and is required for justification of nonuse status if the quota is full and the license has been inactive over one year. An application for transfer of ownership must be received within 30 days of receipt of proof of a pending sale to prevent lapse proceedings in accordance with ARM 42.13.108. A licensee cannot resume operations of a license at premises where the licensee:~~

~~(a) was granted nonuse status for the license; and~~

(b) operated another license at the premises while the previous license was on nonuse status.

(6) Licenses denied extension of nonuse status are subject to the lapse provisions of 16-3-310, MCA. The department shall deny a request for nonuse status if the licensee has been granted nonuse status for the license within the previous six months, unless the request is based upon reasons other than voluntary closure due to adverse economic conditions or a proposed sale of a license.

AUTH: 16-1-303, MCA

IMP: 16-3-310, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.13.107 to simplify the process by which licensees request nonuse status and to make the nonuse status more understandable to the industry.

The department proposes to eliminate the requirement that licensees justify why nonuse status is requested and the requirement of requesting extensions every 90 days. Instead, the department proposes to implement a single request that allows the licensee to place the license on nonuse status for a period of one year. These amendments will reduce the burden placed on licensees and the department.

The department further proposes to amend the rule to prevent a licensee from utilizing nonuse status to rotate licenses on the same premises. This amendment will further the department's goal of ensuring licenses are put into use as intended by law.

The department further proposes amending (6) to prevent a license from being placed back on nonuse status within six months of coming off nonuse status for the reason specified in that section as amended. These proposed amendments will help ensure that licenses are active in order to fulfill public necessity. The department also proposes revising the rule title for simplicity and to better reflect the content of the rule as amended.

42.13.108 LAPSE OF LICENSE FOR NONUSE (1) Any retail license not used in an operating establishment for a period of 90 consecutive days without department approval shall be lapsed for nonuse in accordance with 16-3-310, MCA. A retail licensee shall operate the business as a going establishment unless the license has been approved for seasonal use pursuant to [NEW RULE I] or approved for nonuse pursuant to ARM 42.13.107.

(2) For the purpose of this rule "week" refers to any consecutive seven-day period. The department shall lapse a license based upon a licensee's failure to operate a going establishment for a period exceeding 90 consecutive days unless the license is approved for seasonal use or is granted nonuse status.

(3) An establishment is an operating establishment if it meets the following criteria:

- (a) it is open at least 20 hours a week for any four weeks in a 90-day period;
- (b) inventory of at least ten cases of alcoholic beverages is maintained on the premises each day that the establishment is open;
- (c) alcoholic beverages are displayed for sale in the purchase or consumption area of the establishment each day that the establishment is open; and

~~(d) the sale of alcoholic beverages is at least \$50 each week that the establishment is open.~~

~~(4) A licensee who is unable to maintain an operating establishment must request in writing the department's approval to close the establishment for a period greater than 90 days.~~

~~(a) In the case of an establishment that is operated seasonally, the department must receive a written request from the licensee to close for a specified period greater than 90 days. The department will authorize the closure and will not lapse the license if it determines that the premises is a dude ranch, resort, park hotel, tourist facility or like business. The closure is only effective from the date of the department's letter of authorization through the end of the specified period.~~

~~(b) In the case of closure that was reasonably beyond the control of the licensee, the licensee must submit a written request to the department for authorization to close for greater than 90 days. The department will authorize a closure and will not lapse the license if it determines that the cause was due to loss of lease for the premises, destruction of the premises, bankruptcy or foreclosure action, serious illness or death of the licensee, or like circumstances. The closure is only effective for the period specified in the department's letter of authorization.~~

AUTH: 16-1-303, MCA

IMP: 16-3-310, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.13.108 to add new language in (1) and (2) for improved clarity and understanding within the industry on when the department will lapse a license.

The department further proposes striking much of the remaining content from the rule and relocating it to more applicable rules. Section (3) is to be relocated to a proposed new definition for "going establishment" in ARM 42.13.111, and portions of the language being stricken from (4) that still remain relevant are proposed to be relocated within ARM 42.13.107 and New Rule I.

42.13.111 DEFINITIONS The following definitions apply to this subchapter:

(1) remains the same.

(2) "Alteration" means a structural change or a modification to the premises other than a cosmetic change. Examples include adding a patio or removing a half wall.

(2) and (3) remain the same, but are renumbered (3) and (4).

(5) "Cosmetic change" means a nonstructural change to the premises. Examples include painting, carpeting, and other interior decorating.

(4) through (7) remain the same, but are renumbered (6) through (9).

(10) "Going establishment" means a business that:

(a) is open at least 20 hours per week for any four weeks in a 90-day period;

(b) maintains an inventory of at least ten cases of alcoholic beverages for each day that the establishment is open; and

(c) sells or provides a minimum of \$50, calculated at cost, of alcoholic beverages each week the establishment is open.

(8) through (17) remain the same, but are renumbered (11) through (20).

(21) "Reprimand" means a written warning issued to a licensee.

(18) remains the same, but is renumbered (22).

(23) "Seasonal business" means a business closed for greater than 90 consecutive days due to climatic and other conditions. Examples include a dude ranch, resort, or park hotel.

(19) and (20) remain the same, but are renumbered (24) and (25).

AUTH: 16-1-303, ~~16-1-424~~, ~~16-4-1009~~, MCA

IMP: ~~16-1-424~~, 16-3-302, ~~16-3-311~~, ~~16-4-312~~, ~~16-4-404~~, ~~16-4-406~~, ~~16-4-1001~~, ~~16-4-1002~~, ~~16-4-1003~~, ~~16-4-1004~~, ~~16-4-1005~~, ~~16-4-1006~~, ~~16-4-1007~~, ~~16-4-1008~~, ~~16-6-104~~, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.13.111 to add five new definitions for terms that are used throughout the subchapter for added clarity.

Furthermore, the department reviewed the current authorization and implementing statutes as cited for the rule and proposes striking those that serve no purpose or no longer apply.

42.13.401 IMPORTATION OF WINE (1) and (2) remain the same.

(3) For the first year, the registration fee is based on the total number of cases the registrant intends to ship to Montana that year. For subsequent years, the registration fee is based on the total number of cases the registrant actually shipped to Montana during the preceding year. The registration fee schedule is as follows:

(a) 0-60 cases = no charge;

(b) 61-500 cases = ~~\$25~~ \$100;

(c) 501-1000 cases = ~~\$50~~ \$200;

(d) 1001-~~1500~~ 2000 cases = ~~\$400~~ \$300;

~~(e) 1501-2000 cases = \$200; or~~

~~(f)~~(e) 2001 + cases = \$400.

(4) through (6) remain the same.

AUTH: 16-1-303, 16-4-1103, MCA

IMP: ~~16-3-402~~, 16-4-107, ~~16-4-1101~~, 16-4-1102, 16-4-1103, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.13.401 to more appropriately reflect the cost to administer foreign winery and wine importer registrations. More than 1,000 foreign wineries and wine importers are registered with the department. Increasing the fees is needed to ensure applications, label approvals, and taxes are timely processed.

These increased fees require, pursuant to 2-4-302(1)(c), MCA, an estimate of the cumulative amount of proposed increase for all persons and the number of persons affected. For all licensee types listed in this rule, the estimated number of licenses affected is 283, and the increase in total fees for all licensees is estimated to be \$33,650 annually. These estimates were derived from the department's small business impact analysis of the rules contained in this notice. A copy of the full analysis is available upon request from the person in paragraph 6.

Furthermore, the department reviewed the current authorization and implementing statutes as cited for the rule and proposes striking those that serve no purpose or no longer apply and proposes adding relevant statutory citations to support the rule amendment.

5. The department proposes to repeal the following rules:

42.12.103 SUPPORTING DOCUMENTATION -- ENTITY APPLICANTS

AUTH: 16-1-303, MCA

IMP: 16-4-203, 16-4-205, 16-4-401, MCA

REASONABLE NECESSITY: The department proposes repealing ARM 42.12.103 and relocating the content of the rule to ARM 42.12.101(3)(j).

42.13.105 APPLICABILITY OF LICENSES; PREMISES DEFINED; GOLF COURSE EXCEPTION; PORTABLE SATELLITE VEHICLE; MOVABLE DEVICES

AUTH: 16-1-303, MCA

IMP: 16-3-302, 16-3-311, 16-4-109, 16-4-404, 16-6-104, MCA

REASONABLE NECESSITY: The department proposes to repeal ARM 42.13.105, to eliminate language that is sufficiently covered in statute or is redundant with language in another department rule. Any relevant language from this repealed rule not already covered in ARM 42.12.122 is proposed to be added into it.

6. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov and must be received no later than November 14, 2014.

7. Laurie Logan, Department of Revenue, Director's Office, has been designated to preside over and conduct this hearing.

8. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding a particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in 6 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

9. An electronic copy of this notice is available on the department's web site at revenue.mt.gov. Select the Administrative Rules link under the Other Resources section located in the body of the homepage, and open the Proposal Notices section within. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. While the department also strives to keep its web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of ARM 42.12.111 and 42.13.401 will impact small businesses. The department has determined that the adoption, amendment, and repeal of the remaining rules herein will not significantly and directly impact small businesses. Documentation of the department's determination is available upon request from the person in paragraph 6.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State September 29, 2014.